

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



November 13, 2003

Agenda ID #2972

TO: PARTIES OF RECORD IN PETITION 03-07-016

This is the draft decision of Administrative Law Judge (ALJ) Bruce DeBerry. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>.

Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

AKM:hfl

Attachment

Decision **DRAFT DECISION OF ALJ DeBERRY** Mailed 11/13/2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Petition of Duke Energy North America to  
Adopt, Amend, or Repeal a Regulation Pursuant  
to Pub. Util. Code § 1708.5.

Petition 03-07-016  
(Filed July 8, 2003)

**OPINION DENYING PETITION OF DUKE ENERGY NORTH AMERICA  
TO AMEND REGULATION CONCERNING THE NETTING OF  
STATION LOAD AT GENERATING FACILITIES**

**Summary**

This opinion denies the Petition of Duke Energy North America (DENA) requesting a determination from this Commission that auxiliary loads used at generating stations may be deducted from generation. We direct DENA, and other parties, to pursue this issue in appropriate rate design proceedings.

**Procedural Background**

On July 8, 2003, DENA filed a petition under Pub. Util. Code § 1708.5, and Rule 14.7 of the Commission's Rules of Practice and Procedure, requesting a determination from the Commission that auxiliary loads,<sup>1</sup> or loads currently billed at retail rates by utilities, may be netted from generation delivered to the

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<sup>1</sup> Auxiliary load is power consumed by auxiliary equipment at the generation station including air-conditioning, heating, and other office equipment, as well as power needed to start-up generators. The California Energy Commission defines auxiliary equipment as extra machinery needed to support the operation of a power plant or other large facility.

same substation at the same voltage service level.<sup>2</sup> DENA states that at its Moss Landing power station<sup>3</sup> it supplies power to the electric grid at three voltage levels, 500 kilovolts (kV),<sup>4</sup> 230 kV, and 115 kV, but is charged retail rates for Moss Landing generating units 6 and 7 that receive auxiliary power at 115kV. DENA explains that the current configuration of units 6 and 7 requires that the units take auxiliary load at 115kV, but supply power to the grid at 230kV. As a result, Pacific Gas and Electric Company (PG&E) charges DENA for auxiliary power used by units 6 and 7 regardless of whether units 6 or 7, or other units, supply more power to the grid than is consumed through auxiliary load. DENA states a similar circumstance exists at its South Bay generation station,<sup>5</sup> where auxiliary load may be charged at retail rates, if certain generating units are operating, and if the operating units can provide auxiliary power to other units.

DENA argues that retail charges for auxiliary loads are discriminatory, do not reflect the appropriate level of cost responsibility, and are a result of power plant divestiture. DENA contends that qualifying facilities (QFs) are treated differently than DENA for purposes of determining auxiliary loads, since, unlike other generators, QFs may deduct auxiliary loads from total generation.

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<sup>2</sup> DENA defines voltage service level, as the case may be, at the transmission voltage service level, at the primary distribution voltage service level, or at the secondary distribution voltage service level.

<sup>3</sup> DENA states it owns and operates power plants at Moss Landing, South Bay, Morro Bay and an Oakland Energy Facility. Moss Landing was previously owned by PG&E.

<sup>4</sup> Kilovolts, equal to 1,000 volts, are used to measure the power of electric lines.

<sup>5</sup> The South Bay generating station was previously owned by San Diego Gas and Electric Company (SDG&E).

DENA asserts all generators should be treated equally, and only when auxiliary loads exceed gross generation should generators pay retail rates for auxiliary loads. DENA argues that its proposal is consistent with Federal Energy Regulatory Commission (FERC) rules authorizing the netting of auxiliary load when the generating facility's gross output exceeds or equals its power station requirements.<sup>6</sup> Furthermore, DENA asserts that under FERC rules a former power station owner cannot require a new owner to buy station power under a retail tariff simply because the generating facility has changed owners;<sup>7</sup> thus, it is inappropriate for former utilities to charge new owners retail rates.

DENA explains that it has previously attempted to raise the netting of auxiliary load from generation in PG&E's General Rate Case (GRC) Application (A.) 99-03-014, and Rulemaking (R.) 99-10-025 on Distributed Generation; however, DENA contends the issue was not resolved in either proceeding. In order to timely protest this issue, DENA submitted testimony in SDG&E's Rate Design Window Proceeding, A.03-03-029. DENA also states it is prepared to go forward with similar testimony in the rate design phase (Phase II) of PG&E's 2003 test year GRC.

Responses were filed by West Coast Power (WCP), PG&E, SDG&E, and Southern California Edison Company (Edison). WCP generally supports DENA's position and urges the Commission to adopt regulations permitting the netting of auxiliary load from generation. WCP explains that it owns three

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<sup>6</sup> Order on Petitions for Declaratory Order and Supplemental Order on Rate Application, *supra*, 94 FERC ¶ 61,251 (FERC order).

<sup>7</sup> *Id.*, pp. 24-25.

generating stations, Encina, El Segundo and Long Beach, and due to station configuration, WCP pays retail rates for auxiliary loads and also pays significant stand-by charges. WCP believes that DENA's specific proposal is within the self-supplying station requirements of FERC rules.

PG&E argues that DENA's proposal is substantively unfounded. PG&E states that auxiliary power is provided to Moss Landing over one set of power lines, while DENA delivers power from Moss Landing to the grid over a different set of power lines. PG&E adds that these power exchanges are at different voltages. PG&E also asserts that the units receiving auxiliary power from PG&E are remotely located from those providing power to the grid, although DENA disagrees with this characterization.

PG&E contends it is unnecessary to establish a rulemaking to address the netting of station load, and that this issue should be considered in current rate design proceedings. PG&E points out that DENA submitted testimony in the Rate Design Window Proceeding, SDG&E's A.03-03-029, and that DENA is prepared to provide testimony in February 2004 for PG&E's Phase II, rate design proceeding. PG&E also contends that FERC rules provide for self-supply on-site at generating stations when the electric configuration does not require the use of the grid owner's facilities; and remotely when, in a "retail choice state,"<sup>8</sup> a generator can have retail power delivered from one generating facility it owns to another. PG&E asserts the electrical configuration at Moss Landing does not meet the first requirement, and that DENA does not qualify for remote direct

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<sup>8</sup> PG&E states that California is not currently a retail choice state, and that under Decision 01-09-060, DENA would not qualify for retail direct access since it was not taking service from an Energy Service Provider as of September 20, 2001.

access. PG&E believes that if DENA were to reconfigure its facilities, it could deliver power between the different units at Moss Landing.

SDG&E asserts that FERC rules permit self-generating when the generation facilities are configured in such a way as to make it physically possible for individual station units to self-supply station load. SDG&E argues this is not true for DENA's generating station in SDG&E's service territory, and thus netting of generation is not possible for the station. SDG&E adds that if the Commission establishes a rulemaking proceeding, then additional issues should be considered including an examination of all costs used in providing generation station power.

Edison contends that DENA's Petition fails to meet the requirements of Rule 14.7, and that the issues raised in the Petition have previously been addressed by the Commission and no relief granted. Edison argues that DENA's Petition does not propose specific wording to accomplish the modification, as required by Rule 14.7, and includes factual allegations without required verification.<sup>9</sup> Edison provides that netting of station load was addressed in PG&E's A.99-10-025, and R.99-10-025 (Distributed Generation), and in both instances the Commission did not grant the requested relief. Edison concludes, in a manner similar to PG&E, that DENA has the opportunity to reconfigure its generation stations permitting the netting of generation for auxiliary

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<sup>9</sup> In response, DENA indicates it seeks specific Commission wording that would provide the netting from generation for auxiliary loads delivered to the same substation at the same voltage service level. Further, DENA states it provided the necessary verification after the filing of its Petition.

loads, and that the proper venue for addressing auxiliary loads is in Phase II of PG&E's GRC.

### **Discussion**

The issue before us is whether to adopt a rulemaking proceeding to consider netting of auxiliary loads from generation by independent generators. DENA argues that such a rulemaking would enhance administrative efficiency and conserve parties' and the Commission's resources. We disagree. Establishing a rulemaking will require significant effort, and consume additional resources by interested parties and by Commission staff in order to assign staff, prepare testimony, schedule and hold hearings, file briefs, and prepare and adopt a decision.

This approach is not necessary because we can address DENA's concerns in current rate design proceedings. Both DENA and WCP have filed testimony on this issue in SDG&E's Rate Design Window A.03-03-029. Also, as noted by parties, the PG&E Phase II rate design proceeding provides an additional venue to address this issue.<sup>10</sup> We believe these rate design proceedings provide a greater opportunity for wide participation by many parties, who may be affected by the netting of auxiliary loads from generation. As pointed out by SDG&E, there may be other costs associated with providing auxiliary load power. If these costs, currently paid by independent generators, are allocated to other customers, the changes in cost allocation should be considered as an issue in rate design.

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<sup>10</sup> DENA states it is prepared to go forward with testimony in the PG&E Phase II rate design proceeding.

Given these concerns, and the availability of the two proceedings to address the issue of netting of auxiliary loads from generation, we are not persuaded to establish a separate rulemaking. We further note that if a rulemaking were established, a decision in the rulemaking is likely after this issue could have been addressed in the SDG&E proceeding, thus postponing an early resolution of the matter.

Finally, a review of the Petition and parties' comments, suggests that resolving the netting of auxiliary load from generation may be specific to individual generation stations. It may be that some generation stations may overcome the auxiliary load issue through reconfiguration, while other remedies may be appropriate for other generation stations. Thus, it is reasonable to address this issue through rate design proceedings involving specific utilities, rather than generically through a rulemaking.

In denying DENA's Petition, and determining that a rulemaking is unnecessary, we are not adopting any findings, or other conclusions regarding the netting of auxiliary load from generation. We will consider this issue, along with other rate design issues, in the appropriate proceedings.

In order that parties may timely address this matter in the appropriate proceedings, this order should be effective immediately.

### **Comments on Draft Decision**

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.



### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Bruce DeBerry is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. DENA's Petition requests that the Commission establish a rulemaking to address the netting of auxiliary loads at generating stations.
2. The rate design phase for SDG&E's A.03-03-029 is an appropriate proceeding to consider the matters raised in DENA's Petition.
3. DENA and WCP have filed testimony on the matter of netting of auxiliary loads in the rate design phase for SDG&E's A.03-03-029.
4. DENA has indicated it is prepared to file testimony on the netting of auxiliary loads in PG&E's Phase II rate design proceeding.
5. Establishing a rulemaking to consider the netting of auxiliary loads from generation will require significant time and resources of staff and parties.

### **Conclusions of Law**

1. The issue of the netting of auxiliary loads at generation stations is an appropriate issue in utility rate design proceedings.
2. DENA's Petition requesting a rulemaking to consider the netting of auxiliary loads from generation should be denied.
3. The following order should be effective immediately.

## **O R D E R**

**IT IS ORDERED** that:

1. Petition 03-07-016 is denied.
2. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California.